

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

RUTH ANN BUCK, M.D.,

Petitioner,

Case No. 10-cr-20350

v

Honorable Thomas L. Ludington  
Magistrate Judge Charles Binder

UNITED STATES OF AMERICA,

Respondent.

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING  
PETITIONER'S MOTION TO VACATE**

On July 9, 2013, Petitioner Ruth Ann Buck filed a motion to vacate her sentence under 28 U.S.C. § 2255. ECF No. 76. In her petition, Buck asserted two grounds for relief: (1) that she received ineffective assistance from her pre-trial counsel; and (2) that she received ineffective assistance from counsel during the plea agreement process. ECF No. 76 at 5-6.

**I**

On August 20, 2013, Magistrate Judge Charles Binder issued a report recommending that Petitioner's motion to vacate her sentence be denied. Judge Binder concluded that Buck had waived her ability to challenge her sentence in the Rule 11 plea agreement, ECF No. 68. Judge Binder also concluded that, in the alternative, Buck's counsel had not been constitutionally ineffective. ECF No. 81 at 5.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, Petitioner has not filed any objections. The election not to file objections to the Magistrate

Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

## II

Because Buck's claim for relief lacks merit, the Court will also deny a certificate of appealability. To obtain a certificate of appealability, a petitioner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To demonstrate this denial, the applicant is required to show that reasonable jurists could conclude that the petition should have been resolved in a different manner, or that the issues presented were adequate enough for encouragement to proceed further. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). For the reasons stated above, the Court will deny Buck a certificate of appealability because reasonable jurists could not find this Court's assessment of her claims debatable. The Court will also deny Buck permission to proceed on appeal *in forma pauperis*. *See Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002); 28 U.S.C. § 1915(a)(3); Fed. R. App. 24(a).

## III

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation (ECF No. 91) is **ADOPTED**.

It is further **ORDERED** that Petitioner's motion to vacate (ECF No. 76) is **DENIED**.

It is further **ORDERED** that the Court **DECLINES** to issue a certificate of appealability.

It is further **ORDERED** that the Court **DENIES** Petitioner leave to proceed *in forma pauperis* on appeal because an appeal cannot be taken in good faith. *See* Fed. R. App. P. 24(a).

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: November 22, 2013

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail and on Ruth Ann Buck, 44568-039, FMC Lexington, Satellite Camp, P.O. Box 14525, Lexington, KY 40512 on November 22, 2013.

s/Tracy A. Jacobs  
TRACY A. JACOBS